

IV. REMARKS

Claims 10, 18, and 43 are the three independent claims presented in this application. As the Office has noted, no single reference discloses the elements of either of these independent the claims. Rather, the Office has expressed concern as to claims 10, 18, and 43 under 35 U.S.C. §103(a) based on the Azar reference in conjunction with a reference to Cherukuri. Azar is proposed as supplying all elements of the claims other than the calcium aspect. The Cherukuri reference is proposed as supplying the calcium aspect required. In response, the applicant has amended the claims to highlight aspects and respectfully disagrees that the references make obvious the aspects of the claims as amended.

Specifically, the Azar reference does not disclose the suggested elements of the claims in the application. Further, in admitting that that the Azar reference does not disclose supplying a calcium supplement, the action proposes that this deficiency is supplied by the Cherakuri reference. Again, the applicant explains below that even these combined disclosures do not make the claimed invention obvious.

First, it must be understood that the invention of these claims involves a method of determining the propriety for a user to take a separate calcium supplement by providing a separate test to determine the need for the supplement. As now highlighted in claim 10, the invention involves the (paraphrased) steps of:

- containing an amount of a separate calcium supplement;
- selecting a plurality of saliva pH test strips useful in conjunction with that calcium supplement;
- establishing a separate saliva pH test strip procedure;
- compactly assembling a plurality of saliva pH test strips;
- attaching the compactly assembled plurality of saliva pH test strips to the calcium supplement container;
- providing the separate calcium supplement to the purchaser; and
- providing the compactly assembled plurality of saliva pH test strips to the purchaser at the time of purchase.

Claim 18 sets forth a similar method without limiting the supplement to calcium or the test to a pH test. Claim 43 sets forth this more general system as an apparatus claim. In sharp contrast to

each of these claims, the Azar reference involves only a pH test to encourage gum chewing. It does not involve a separate supplement – or any supplement. It only encourages a gum chewer to use the gum in a manner that generates saliva to rinse sugar residue. No separate supplement is involved. And no aspect of providing a user separate supplement-relevant information is indicated in any way. Similarly, the Cherukuri reference involves merely using gum as a delivery vehicle for certain antacids. Interestingly, the combination of the Azar reference and the Cherukuri references appear to be a strong testament to how non-obvious the present invention really is. While a gum delivery vehicle for an antacid is disclosed in Cherukuri, in fact no connection between the pH testing to encourage gum chewing of Azar was ever made in conjunction with a separate supplement. This is in spite of the fact that the two references have been known for many years. It was the present invention that provides this significant link and it is that link that is set forth in the present claims. The applicant respectfully disagrees that such a combination would have been a matter of ordinary skill in the art and requests support for such a conclusion should it be maintained because the fact is that even though the two references co-existed for many years, until the present invention, the claimed combination was not provided and it was not a matter of simple combination of references such as the two listed in the action.

Of course, because the independent claims appear allowable as amended, all dependent claims are likewise allowable. These dependent claims each have separate reasons for allowability, but rather than address each and every one, it may be most efficient to merely highlight several of these dependencies. For example, claims 60 and 61 as newly amended each involve a recordation system or facilitating a test recording option as a historical enhancement in the value to the purchaser. No comment as to these claims has been provided in the office action, they have only been listed as rejected in conjunction with other claims. Similarly, claims 62 through 65 as newly amended each involve the benefit of having an internet-based recording system to enhance the value to the purchaser and to encourage use. The action proposes that the Brown reference supplies this admitted deficiency in the base references (Azar and Cherukuri). As admitted in the action, the Brown reference involves only a motivational driver and comprehension capability coding system. It has nothing to do with any supplement use – or any aspect of taking a calcium supplement for that matter. It simply allows a participant in the field of “on-line health education” such as smoking cessation to profile that participant through on-line questionnaires on such aspects as reading habits, family life, and the like (see Brown Figure

3). This is a very different aspect than enticing use of a new supplement testing system as set forth in the present claims and does not make such claims obvious.

Finally, it is noted that no rejections have been made of claims 67 and 68, the claims directed to the aspects of instructing a user in a manner designed to reduce test results variability and approximately constant parameter test procedures. Again, none of the references disclose these aspects and allowance at the earliest convenience is requested.

This response contains initial aspects only. Should the office still maintain any rejections, it is requested that the applicant be telephoned to allow a personal interview so that the significant differences and be further explained and to permit more efficient prosecution.

Further, the amendments submitted herein should be understood to be made as a practicality only, and should not to be construed as creating any situation of file wrapper estoppel or the like as all rights are expressly reserved and may be pursued in this or other applications, such as divisionals, continuations, or continuations-in-part if desired. Relatedly, it should be understood that the amendments made herein are made for tangential issues of clarity and as a matter of the Office's convenience or expedience only. The amendments should not be interpreted as an action that in any way surrenders a particular equivalency, surrenders any right to patent coverage, or otherwise limits any rights which the Applicant may now or hereafter assert. It should be understood that, unless and to the extent deemed broadened by this amendment, and even as amended, the Applicant expressly reserves all rights, including but not limited to: all rights to maintain the scope of literal coverage with respect to any element as may have existed under the language previously presented, all rights to maintain the scope of equivalency coverage as may have existed under the language previously presented, and all rights to re-present the prior language at any time in this or any subsequent application. To the extent currently foreseeable, no change or reduction in direct or equivalency coverage is believed to exist, and no change or reduction in direct or equivalency coverage is intended through the presentation of this amendment.

Further, the office and any third persons interested in potential scope of this or subsequent applications should understand that broader claims may be presented at a later date in this or a continuation in spite of any amendments or arguments presented, thus there is no intention to disclaim or surrender any potential subject matter. Both the examiner and any person otherwise interested in existing or later coverage or considering the possibility of an indication of disclaimer or surrender of potential coverage, should be aware that no such surrender or

disclaimer is intended or exists in this application. Limitations such as arose in *Hakim v. Cannon Avent Group, PLC*, 479 F.3d 1313 (Fed. Cir 2007), or the like are expressly not intended in this or any subsequent matter related.

V. Conclusion

In a September 30, 2008 office action communication, the Office raised concerns under 35 USC §§112 and 103 to certain claims. Some other rejections appear by listing at the beginning numbers of the office action only with no explanation and no reference cited. In response, the Applicant submits this amendment, explanation and request for reconsideration to fully address the Office's September 30, 2008 office action. The Applicant believes all concerns have been addressed and that all claims remaining in the case – claims 10-20, 43-46, 54-69, 73-82, 105-106, 110-113, and 132-136 – are in condition for allowance. Reconsideration and allowance of these claims is respectfully requested at the Examiner's earliest convenience. Finally, should the Examiner have any remaining questions or disagree with any of Applicant's explanations, it is requested that the Examiner contact the undersigned by telephone in order schedule a personal interview and to expedite the processing of this application.

Dated this 30th day of March, 2009.

Respectfully Submitted,
SANTANGELO LAW OFFICES, P.C.

By: /Luke Santangelo/
Luke Santangelo
Attorney for Assignee
USPTO Reg. No. 31,997
125 South Howes, Third Floor
Fort Collins, Colorado 80521
(970) 224-3100